

BILL ANALYSIS

S.B. 371
By: Carona
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

When property is used in criminal activity, it is authorized to be seized by law enforcement and retained as evidence, destroyed, or returned to its rightful owner, depending on the particular crime in which the property was used. If the property meets the definition of "contraband" in Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, which is defined as, among other things, property used in the commission of offenses under certain chapters of the Penal Code, Health and Safety Code, Finance Code, Business and Commerce Code, and the Securities Act there is a specific procedure for ensuring that any rightful owner of the property has an opportunity to reclaim it prior to it being destroyed or going to the state. Gang-related offenses under Chapter 71 (Organized Crime), Penal Code, are not included in the definition of contraband.

Chapter 59, Code of Criminal Procedure, authorizes seizure of contraband and requires that a report of a seizure be given to a prosecutor, who, within 30 days, is required to file a notice of seizure and forfeiture. Under Section 59.04 (Notification of Forfeiture Proceeding), Code of Criminal Procedure, the attorney representing the state is required to file a notice of seizure and intended forfeiture with the clerk of the court and is required to forward that notice to the owner of the property and any other party with an interest in the property. This helps ensure that any possible rightful owner of the property has an opportunity to claim it.

In the civil proceeding, the burden is on the state to prove by a preponderance of the evidence that the property was used in the commission of a crime. If someone claiming ownership cannot prove their case, or if no one comes forward to claim the property, the state becomes the legal owner of the property.

As proposed, S.B. 371 amends Chapter 59, Code of Criminal Procedure, to add offenses under Chapter 71, Penal Code, to the list of offenses for which property seized is considered contraband.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, to define "contraband" as property of any nature, including real, personal, tangible, or intangible, that is used or intended to be used in the commission of any offense under Chapter 71 (Organized Crime) and Section 46.06(a)(1) (Unlawful Transfer of Weapons) Penal Code. Makes nonsubstantive changes.

SECTION 2. Amends Chapter 59, Code of Criminal Procedure, by adding Article 59.011, as follows:

Art. 59.011. Authorizes the attorney representing the state, if property described by Article 59.01(2)(B)(x) or (xi) is subject to forfeiture under this chapter and Article 18.18

(Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and Other Contraband), to proceed under either this chapter or that article.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.

EXPLANATION OF AMENDMENTS

Conforms this bill to sections within S.B. 11. Adds section 46.06(a)(1) Penal Code to the list in SECTION 1 and renames Art. 59.011 in SECTION 2 and makes nonsubstantive changes.